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August 21, 1997

HAND DELIVERY

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: **Universal Service Generic Contested Case**
Docket No. 97-00888

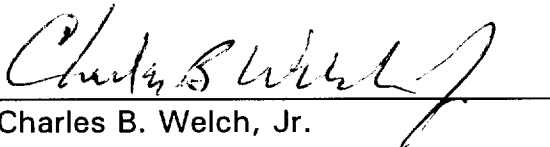
Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of Time Warner Communications of the Mid-South's, L.P. Comments to the Hearing Officer's Notice of Proposed Schedule and Request for Comments in the above referenced case.

Copies are being served on all parties to this proceeding.

Very truly yours,

FARRIS, MATHEWS, GILMAN, BRANAN & HELLEN, P.L.C.

By: 
Charles B. Welch, Jr.

CBW,jr:cg

c:welch;timewarn:letters:waddell.821

cc: Carolyn M. Marek
All Parties of Record

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re:

**Universal Service Generic
Contested Case**

**Docket No.
97-00888**

**TIME WARNER COMMUNICATIONS OF THE MID-SOUTH'S
RESPONSES TO HEARING OFFICERS NOTICE
OF PROPOSED SCHEDULE AND REQUEST FOR COMMENTS**

Time Warner Communications of the Mid-South, L.P. ("Time Warner"), files its comments in response to the Hearing Officer's Notice of Proposed Schedule and Request for Comments, as follows;

PRELIMINARY MATTERS

A. Cost Model Issue:

As stated above, the TRA must notify the FCC by August 15, 1997, if the TRA decides to develop its own cost study. At the August 5, 1997 TRA Conference, the Directors will consider whether Tennessee should develop its own cost study for Universal Service, or work with the FCC to develop a model suitable for Tennessee. The TRA Staff expects to recommend working with the FCC on a forward looking cost model suitable to Tennessee.

COMMENT:

Not applicable.

B. Proposed Phase 1 & Phase 2 of Issues:

It has been proposed that Universal Service be processed in two phases. Phase 1 would involve all issues not requiring cost and revenue comparisons. Phase 2 would involve the computation of Universal Service costs and determination of explicit subsidies. Under this two phase approach, if Access Charge was consolidated with

Universal Service, Access Charge Reform would be considered during Phase 2. Parties are welcome to comment on the proposed separation of issues.

COMMENT:

Time Warner does not object to the bifurcation of issues in the Universal Service Proceeding and the proposed Phase 1 and Phase 2 approach is acceptable.

C. Proposed Schedule:

Attached to this request is a proposed schedule for Phase 1 and Phase 2 to be utilized in this docket. Parties may comment on the proposed schedule.

COMMENT:

The Tennessee Regulatory Authority ("TRA") has notified that it will notify the Federal Communications Commission ("FCC") of its intent to develop a cost model specific to Tennessee. Assuming that such a cost model would be developed in Phase 2, the proposed schedule will not allow such a cost model to be developed prior to the FCC deadline of February 8, 1998, to submit models. Further, Time Warner would point out that the North Carolina Utilities Commission has scheduled hearings in its universal service docket for November 17-25, 1997. Due to the demand on its resources, Time Warner would request that the hearing on contested issues in Phase 1 of this docket be rescheduled for the week of November 10-14, 1997. Based on previous experience, many parties in this docket will also be participating in the North Carolina proceeding.

D. Consolidation:

Some potential participants, in their initial comments, suggested that the Universal Service Docket No. 97-00888 should be consolidated with the Access Charge Reform Docket No. 97-00889. Please comment on whether consolidation should be considered.

COMMENT:

Time Warner strongly urges the TRA to maintain separate dockets for Universal Service and Access Charge Reform. The separation of the dockets contemplates that separate pleadings and orders be filed. In deference to judicial economy, however, the two dockets should proceed concurrently and should be consolidated for hearing purposes only. Access charges are merely one of the component issues in the universal service docket. Further, access charge reformation should not be artificially impacted as a mere accommodation to universal service cost demands. For these reasons, the issues should be decided separately, much in the same manner as was

done by the FCC.

E. Regulatory Contemplated:

Do the participants in this docket contemplate, that ultimately, the findings of the TRA regarding Universal Service will need to be incorporated in rules and regulations of the TRA?

COMMENT:

The TRA's broad use of its wide range of discretion is contemplated in Tenn. Code Ann. §65-5-207(a) - (d). Certainly, the TRA will accomplish a great deal in resolving universal service issues by an order in this docket, however, it would be remiss to expect that an order issued at the end of the proceeding would be sufficient to maintain universal service throughout the state over an extended period of time without the benefit of certain rules and regulations promulgated by the TRA. In order to create and enforce a satisfactory alternative universal service support mechanism in the rapidly changing environment, the TRA will most probably be required to use all of its discretionary authority to formulate policies, promulgate rules, and issue orders in contested case proceedings.

F. Non-rural and Rural Carriers:

Pursuant to the FCC Order 97-157, rural carriers will not see changes in Universal Service support before January 1, 2001 (Paragraph 204 of the Order). There is a Joint Board being formed at the FCC level to address the issues unique to rural carriers. Therefore, should there be a bifurcation of the non-rural and rural Universal Services issues and leaving the rural Universal Service issues to be considered at a later date? Please comment on this proposal.

COMMENT:

Time Warner submits that there should be a bifurcation of the non-rural and rural universal service issues which would reserve the consideration of rural universal service issues for a later date. It would be preferable to have the Joint Board recommendations before addressing the rural universal service issues in order to avoid potential duplication of effort.

G. Legal Framework:

Below is a request for comments on the definition of Universal Service. If the parties foresee that additional legal issues need to be resolved, please submit those issues along with your position on those issues with your comments.

COMMENT:

Not required.

ISSUES FOR CONSIDERATION

IV. Definition of Universal Service:¹²

Under Tennessee law, Universal Service is defined in Tenn. Code Ann. §655-5-207 (a). The Telco Act section 254(c) defines Universal Service.

Under section 254(f), the Act provides a State may adopt regulations "not inconsistent with the Commission's rules to preserve and advance universal service."

A. ISSUE: Is Tennessee's definition under Tenn. Code Ann. §65-5-207(a), consistent with the Federal Act's definition of Universal Service? If not, is Tennessee's definition preempted by the Federal Act?

COMMENT:

Practically, the Tennessee definition and the Federal definition are consistent. Technically, however, there are a few discrepancies in the language used to define or describe universal service. The Federal definition includes certain services, which, arguably, do not appear in the State Act. These services include the following: (1) single party service; (2) access to operator services; (3) access to interexchange services; (4) access to directory assistance; and (5) toll limitation services for qualifying low income customers. The State Act includes Lifeline and Link-up Tennessee which do not appear in the Federal Act. With the exception of the specific differences in language, the State Act and the Federal Act are amazingly consistent considering the adoption of the State Act preceded the adoption of the Federal Act by approximately one year. The intent of the Acts appear to be very consistent.

B. ISSUE: Should the TRA recommend to the Tennessee legislature that they adopt the Federal definition of Universal Service?

COMMENT:

¹The Roman Numeral headings used in this Request for Comments are tied to the Report and Order issued In the Matter of Federal-State Joint Board on Universal Service, Docket No. 96-45.

²Many of the questions and concerns listed in this request come from the comments and suggestion made by the parties in their filings made July 9, 1997. The TRA appreciates their time and effort and looks forward to receiving additional informative comments as the TRA proceeds with this docket.

Since the intent of the State and Federal Act is consistent, it would appear to be unnecessary for the TRA to recommend to the Tennessee Legislature that they adopt the Federal definition of universal service. The State Act does not seem to be inflexible as to suggest that the TRA's interpretation of it would preclude the more specific items included in the Federal Act.

C. ISSUE: Whether the Federal or Tennessee definition of Universal Service or some combination of both is followed, what services should be provided?

COMMENT:

- (1) Single party access lines;*
- (2) two way switched voice or data transmission over voice grade facilities;*
- (3) touch-tone;*
- (4) 911 emergency services;*
- (5) access to operator services;*
- (6) access to interexchange service;*
- (7) access to directory assistance;*
- (8) toll limitation services for qualifying low income consumers;*
- (9) Lifeline; and*
- (10) Link-up Tennessee.*

D. ISSUE: Should the TRA provide for additional support under a Tennessee mechanism, for services in addition to those set forth by the FCC?

COMMENT:

At this point, the TRA should not further complicate an already complicated issue by injecting consideration for additional support into this proceeding. The services required by the federal and state legislation should be sufficient as a starting point. The Federal Act mandates a continuous analysis of the definition of universal service in an evolving industry. Reconsideration of the services to be included should occur at appropriate intervals under the Federal Act.

E. ISSUE: Should the TRA adopt specific procedures for passing upon "exceptional circumstances" as set forth in paragraphs 89-92 of the FCC order?

COMMENT:

No. The traditional forum should be sufficient to handle most "exceptional circumstances." The TRA currently hears and decides issues in contested case proceedings and rule making proceedings. These proceedings may be initiated by the TRA or any interested party. It would be reasonable to assume that this traditional forum allows for sufficient party participation and public debate. For "exceptional circumstances" which pertain to rural carriers, a separate proceeding should be initiated at a later date to address these issues. There would appear to be no issue so extraordinarily unusual to be considered under paragraph 89-92 of the FCC order which could not be addressed in this environment.

F. ISSUE: Are there any telephone companies that will not be able to offer all the elements of Universal Service by the end of 1998? (e.g. toll blocking) If this is a problem, what steps are needed to remedy the situation?

COMMENT:

The TRA could ask the certified telecommunication service providers in Tennessee to identify whether or not they believe they will be eligible carriers for universal service support. Only a carrier capable of providing all required services to residential customers in high cost areas and low income customers should be considered as a carrier eligible to receive universal service funds. An exception to this rule, however, consistent with the Report and Order at Paras. 89093, allows a carrier incapable of providing single party service, E-911 or toll limitation services, upon petition to the TRA to receive universal service support for a designated period of time while completing network upgrades.

V. Affordability:

A. Define and consider affordability of rates:

Section 254(b)(1) of the Telco Act provides that, "quality services should be available at just, reasonable, and affordable rates." The definition of affordability contains both an absolute component "to have enough or the means for", which takes into account an individual's means to subscribe to Universal Service; and a relative component "to bear the cost of without serious detriment", which takes into account whether consumers are spending a disproportionate amount of their income on telephone service.

1. ISSUE: Provided that existing rates were set to the "just and reasonable" standard

pursuant to Tenn. Code Ann. § 65-5-201, is there an assumption that current rates are set at an affordable level?

COMMENT:

Assuming current rates were established in accordance with Tenn. Code Ann. §65-5-201, these rates are presumptively “just and reasonable”. This presumption, however, is rebuttable in light of the FCC order which recognizes “affordability” as a factor dependent upon customer income level. It should be noted, however, that since the rates for residential, basic telephone service have traditionally been artificially depressed, higher rates most probably could meet the “just, reasonable and affordable” standard.

2. ISSUE: Does the existence of programs to support low income consumers, further the argument that current rates meet the affordability requirement in Tennessee?

COMMENT:

Yes. The existence of programs to support low income users ensures the availability of services for those who could not afford such services at virtually any rate, while the current rates maintain affordability to the broad base of consumers.

3. ISSUE: Are there other factors that should be considered?

COMMENT:

Yes. Customer income level is a factor that should be examined in the consideration of “affordability”. The extent to which any given product or service is “affordable” obviously depends heavily upon the individual consumer’s income and wealth. For example, the general consumer should not be required to subsidize basic telephone service for consumers who can afford and elect to live in an exclusive, remote neighborhood. Thus, in developing an universal service support mechanism that conforms to the statutory requirement that basic local telephone service be “affordable”, household income should be included among the criteria under which the extent of universal service support is to be determined. A study recently conducted by Time Warner indicates that approximately twenty to thirty percent (20%-30%) of the aggregate universal service funding requirements for high cost areas could be eliminated if the support were limited to households with income levels below the seventieth income percentile. Quantitatively, such a requirement could mean a savings of up to 4.5 billion dollars in annual support nationally and up to 115 million dollars in Tennessee if income is considered.

B. ISSUE: The FCC did not choose to adopt a nationwide rate for Universal Service. Should Tennessee adopt a statewide universal rate?

COMMENT:

Yes. Per capita income of the local area should be considered in determining affordability. Time Warner submits that detailed per capita income information is available on a statewide basis in Tennessee. The TRA should consider adopting a specific rate for universal service in high cost areas, counties, or if possible, communities. Of course, there must be a balance between the ideal and the administratively feasible. At the very minimum, the TRA should adopt a statewide universal rate.

C. ISSUE: Define explicit subsidy.

PROPOSAL FOR COMMENT: Explicit subsidy is a support that is calculable and identifiable vs. implicit subsidy which generally means there is a support but the exact amount of that support has not been determined. Is there a more appropriate definition?

COMMENT:

An "explicit subsidy" is a specific, predictable and sufficient grant imposed by the regulatory authority and paid by telecommunications services providers for the benefit and the general welfare of the residential, consumer public. This definition is more appropriate than the proposal because it contemplates the mandate of the Federal Act at Section 254(b)(5).

D. ISSUE: How may complaints filed on the affordability of intrastate rates be addressed?

PROPOSAL REQUESTED: The FCC identifies several components to be considered when determining affordability of rates, such as subscribership levels, size of local calling area, consumer income level, cost of living, etc. What procedures would be least burdensome on carriers and the TRA, and would provide the information necessary to determine if rates are affordable on an ongoing basis?

COMMENT:

The determination of affordability of intrastate rates in this proceeding should be comprehensive and include consideration of any pending complaints. In accordance with the Federal Act, the TRA should consider modifications at appropriate intervals on its own initiative or on the complaint of effected parties in a contested case proceeding. The traditional contested case proceedings would certainly comply with due process considerations. However, alternative dispute resolution such as mediation and/or arbitration should be considered preliminarily to expedite the process and conserve costs.

VI. Carriers Eligible for Universal Service Support

A. ISSUE: Define carrier of last resort.

PROPOSAL FOR COMMENT: The Staff defines carrier of last resort as the carrier ultimately responsible for the provision of telephone service including the provision of Universal Service core elements in a given area. Is there a better definition?

COMMENT:

Time Warner supports the proposal for comment.

B. ISSUE: Determine if a carrier of last resort designation is necessary.

PROPOSAL FOR COMMENT: The designation of a carrier of last resort for a given region is necessary to ensure that all Tennessee consumers are provided with telecommunication services. If no carrier of last resort is designated there is the potential danger of some consumers not being served. At what point, if any, would carrier of last resort designation become unnecessary?

COMMENT:

Time Warner agrees with the staff proposal that a carrier of last resort designation is necessary. This designation should, at least initially, in every instance be the incumbent local exchange carrier. At some point, the designation may become unnecessary because of the presence of effective competition. Until such time, however, the incumbent local exchange carriers should retain their historical obligation as the owner of the ubiquitous network which has been subsidized in great part by the rate payer through government regulation and the monopoly environment.

C. ISSUE: What mechanism should be put in place if a carrier proposes to withdraw service?

PROPOSAL FOR COMMENT: It appears that mechanisms need to be developed to address the possibility that a carrier of last resort may desire to withdraw service in one or all regions which it serves. Allowing a carrier of last resort to withdraw needs to be based on specific and predictable criteria. At a minimum, the Staff proposes that no carrier of last resort should be allowed to withdraw service prior to the designation of another carrier to serve as the carrier of last resort. Do you have any suggestions on criteria that needs to be established in order to allow a carrier to withdraw as carrier of last resort?

COMMENT:

Time Warner supports the Staff proposal. Generally, specific criteria to be established in order to allow a carrier to withdraw from its designation as carrier of last resort should include a detailed evaluation of the available network facilities of alternative carriers in a service area. This standard would require an actual showing that an alternative carrier or carriers is capable of providing services in a similar or better quantity and quality as the carrier of last resort through its own facilities.

D. ISSUE: What criteria should be used to designate eligible telecommunication carriers?

PROPOSAL FOR COMMENT: The FCC concluded that the plain language of section 214(e) precludes adoption of additional eligibility criteria beyond those enumerated in that section. Therefore, the FCC adopted without expansion the statutory criteria set out in section 214(e), as the rules governing eligibility. The Staff proposes to use the eligibility criteria of section 214(e) to designate eligible telecommunication carriers. Do you agree with this proposal?

COMMENT:

Time Warner agrees with the staff proposal and strongly recommends that the TRA adopt the eligibility criteria set forth in Section 214(e) as the rules governing eligibility.

E. ISSUE: Should Universal Service support be provided to cellular carriers and resellers.

PROPOSAL FOR COMMENT: The FCC adopted without expansion the statutory criteria set out in section 214(e) as the rules governing eligibility. The FCC interpreted the term “facilities” in section 214(e)(1) to mean any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under section 254(c)(1). The FCC further concluded that a carrier that offers any of the services designated for Universal Service support, either in whole or in part, over facilities obtained as unbundled network elements pursuant to section 251(c)(3) satisfies the “own facilities” requirement of section 214(e). The staff recommends that the TRA use the criteria set forth by the FCC and to the extent that cellular carriers or resellers meet these criteria, they should be provided Universal Service support. Do you agree with this recommendation?

COMMENT:

Generally, Time Warner agrees with the Staff recommendation. Time Warner submits that the fundamental principle adopted by the FCC permits only a carrier, that incurs the cost of providing service to a customer, to receive the related universal service support. One of the basic principles necessary to achieve universal service

goals is a principle adopted by the Report and Order is that universal service supports should be allocated to the carrier that incurs the cost of providing the relevant service. This principle cannot be reconciled, however, with the FCC's standards applied to the level of a carrier's use of its own facilities necessary to qualify for universal service support. The Report and Order also adopts a second vital principle, the principle of competitive neutrality, that is also inconsistent with the FCC's conclusions about the level of a carrier's own facilities that must be used to qualify for universal service support.

The Report and Order states expressly, "universal service support should be provided to the carrier that incurs the cost of providing service to a customer". Report and Order, para. 162. Time Warner supports this conclusion and also agrees with the FCC's rationale for adopting the principle that universal service support should go to the carrier that incurs the related cost of providing the relevant services. Contrary to this rationale, the FCC also reached conclusions regarding the level of a carrier's use of its own facilities necessary to qualify for universal service support. Specifically, the FCC concluded that a carrier could satisfy the section 214(e) facilities requirement and qualify as an eligible carrier by relying on its own facilities only to provide access to operator services and obtain the remaining services designated for support from another carrier through resale. Clearly, if a carrier is only providing access to operator services, and is providing the remaining services through resale, it is incurring only a small fraction of the total cost of the service to the customer. The reseller, however, will receive all of the related universal service support in direct contradiction with the principle that the carrier who incurs the cost of providing service to a customer should receive the related universal service support. Further, it is difficult, if not impossible, to reconcile the FCC conclusion that a reseller that uses its own facilities to provide operator services, while providing the remaining services designated for support through resale, is eligible for universal service support, but a pure reseller, that provides all services through resale, is not.

The FCC's conclusions regarding the level of a carrier's use of its own facilities necessary to qualify for universal service support are also inconsistent with the guiding principle of competitive neutrality. At paragraph 47, the Report and Order states that "competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another..." The FCC's decision to provide universal service support to a reseller offering access to operator services over its facilities but providing all other services through resale, significantly disadvantages other providers. First, it disadvantages the carriers that are actually incurring the high cost for providing the services at issue (the incumbent local exchange carriers that are selling the services other than and operator access to the reseller at a wholesale discount). Second, it disadvantages facilities-based, new entrants seeking to enter the market as facilities-based providers who will incur significant cost to provide services (and qualify for universal service support). In contrast, resellers offering access to operator services will be eligible for that support

by incurring only the relatively insignificant cost associated with providing access to operator services.

Moreover, the FCC's decision to provide universal service support to a reseller providing access to operator services over its own facilities, but providing all other services through resale is also not competitively neutral because it places certain resellers at a distinct advantage. Specifically, in order to become eligible for universal service support, interexchange carriers that already provide access to operator services will only need to incur a very small fraction of the total cost of providing service to the customer. In contrast, other resellers will, at a minimum, be required to incur costs to obtain facilities to provide at least one of the designated services. The competitors decisions to enter local markets should not be "based on artificial economic incentives" created by the new universal service support mechanism. Report and Order, para. 173. Allowing a reseller to enter the market by incurring relatively little cost by offering a low cost designated service but nonetheless satisfying the facilities requirement of section 214(e) and thus, becoming eligible for universal service support is such an artificial economic incentive.

Finally, the FCC's conclusion that a carrier could satisfy the facilities requirement by using its own facilities to provide access to operator services while providing the remaining services designated for support through resale also violates section 254(e) of the Federal Act which requires that a carrier receiving universal service support to use that support for the facilities and support for which it is intended. Section 254(e) states, in part, as follows:

A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading for facilities for which the support is intended.

The FCC's policy allows certain resellers to obtain universal service support, even though it is clear that many of these carriers will not use the bulk of such support to maintain or upgrade facilities. In part, this is attributable to the fact that the services that the reseller will provide on a facilities basis are not high cost and accordingly, the high cost will be born by a second carrier. Not surprisingly, a carrier that only provides access to operator services through its own facilities would be unlikely to use more than an insignificant amount of that support to provide, maintain and upgrade its operator access services and their related facilities. At best, the reseller would spend that money on marketing and software additions, thereby frustrating universal service goals.

F. ISSUE: What is the appropriate role of cooperatives in this proceeding?

PROPOSAL FOR COMMENT: Section 254(f) states, "Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on a equitable

and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of Universal Service in that State." It is clear that cooperatives will contribute to and receive support from the Universal Service support fund. Because the cooperatives will be included in the results of this proceeding, the Staff believes that cooperatives should be encouraged to participate fully in the Universal Service docket. Do you agree?

COMMENT:

Time Warner agrees that the cooperatives should be encouraged to participate in this universal service docket, but would note that most, if not all, cooperatives in Tennessee would qualify as "rural carriers". Cooperatives classified as such might prefer to elect to participate in only the portion of the proceedings concerning rural universal services issues, if the nonrural and rural issues are bifurcated.

VII. High Cost Support

A. ISSUE: Should Tennessee perform its own forward looking cost study to determine intrastate Universal Service report? If not, should it work in conjunction with the FCC to determine methodology and inputs and adopt the FCC cost and revenue benchmark calculations? **Please note that comments on this issue are due August 1, 1997. Please see page 2, section A.**

PROPOSAL FOR COMMENT: As stated above, in "Preliminary Matters" the Directors of the TRA will consider the issue of whether Tennessee should develop its own cost study at the Conference scheduled for August 5, 1997. Therefore, if the parties desire to comment further on this issue, they should file those comments by August, 1, 1997.

COMMENT:

Comments on this issue were filed on August 1, 1997.

B. ISSUE: If it is determined that Tennessee will do a cost study what would be the core elements? (i.e. residential, business, usage).

1. What area should be included in each cost study?
2. The FCC requires diverging to the wire center serving areas at least, and to smaller areas if feasible. Is this appropriate?

PROPOSAL FOR COMMENT: FCC Order 97-157 sections 54.1-01 and 54.207 set forth the services designated for support and service areas. Is it appropriate for Tennessee to adopt these services? If not, what services do you believe should

receive Universal Service support. Also please comment on how service areas may be defined in Tennessee.

COMMENT:

Although the final determination in this proceeding should only include the cost of providing residential service, an appropriate cost model must include a network capable of providing all services including business services in order to allow proper consideration to the economies of scale. Time Warner agrees with the FCC's services for support and service areas and encourages their adoption for Tennessee.

C. ISSUE: What elements should be included in the revenue benchmark?

PROPOSAL FOR COMMENT: The Staff expects to use the elements that will be included in the national benchmark, (local, discretionary, interstate and intrastate access services, and other revenues used in the cost study). Do you feel these are the appropriate elements to be included in the benchmark?

COMMENT:

Time Warner agrees with the revenue benchmark approach and submits that it is appropriate to use the elements that will be included in the national benchmark for Tennessee.

VIII. Support for Low Income Consumers

A. ISSUE: Define a process to address any waiver requests of carriers to the no-disconnect rule.

PROPOSAL FOR COMMENT: The no-disconnect rule would prohibit disconnection of local service for Lifeline customers for non payment of toll charges. Despite the benefits of a no-disconnect rule for Lifeline consumers, the FCC recognized that the state utility regulators would have the ability to grant carriers a limited waiver of the requirement under limited special circumstances. The Staff suggests that the TRA adopt the three requirements of the FCC for granting a waiver request. What is your position?

COMMENT:

Time Warner agrees with the Staff's suggestion that the TRA adopt the three requirements of the FCC for granting carrier waiver requests to the no-disconnect rule.

B. ISSUE: Determine if the current level of state discounts for Lifeline should be changed.

PROPOSAL REQUESTED: Currently, Tennessee provides \$3.50 per month support for Lifeline. At the state's current level of funding (\$3.50/month) the FCC will provide an additional \$7.00 in federal support for a total of \$10.50 in support. If this level of support is maintained, then procedures may be considered to prevent Lifeline customers from receiving 100% free service. For instances, should a minimum amount be charged to the Lifeline customer? Please comment.

Tennessee has the option of reducing its monthly support amount, which in turn would reduce the federal funding. Any reduction in Tennessee's current funding of \$3.50 will result in a Federal reduction of one half of the amount of the Tennessee reduction, down to the minimum Federal funding amount of \$5.25. For example, Tennessee funds \$1.00, Federal minimum funding \$5.25. Federal matching of ½ of state is \$.50. This would provide total support of \$6.75. Please comment.

COMMENT:

Tennessee should take maximum advantage of the federal lifeline program. Any changes in the current level of state discounts necessary to maximize the federal benefit should be adopted. There should be, however, a minimum charge to all lifeline customers to prevent these customers from receiving one hundred percent (100%) free service.

C. ISSUE: Develop funding mechanisms.

PROPOSAL REQUESTED: The TRA requests comments from the parties on how funding for this support can be accomplished.

COMMENT:

Support for Lifeline should be funded along with the other universal service elements.

X. Schools and Libraries

A. ISSUE: Determine if additional intrastate support for eligible schools and libraries is needed.

PROPOSAL REQUESTED: During the July 15, 1997, TRA agenda, the Directors adopted the FCC matrix for federal funding to schools and libraries. In addition to this federal discount the state currently has ISDN, School Parent Telecommunications Service, in Classroom Computer Access Service and Distance Learning Video Transport Service discounts available to schools and libraries.

1. Do any parties believe that more discounts to schools and libraries should be

offered in addition to the federal discount matrix and the four state discounted services?

2. Should additional discounts to Internet services be provided by the state?

COMMENT:

No. At this particular point in time, it would seem inappropriate to consider additional discounts to schools and libraries other than the federal discount matrix and the four state discounted services. Additional discount could be appropriate at some point in the future after review as contemplated by the Federal Act. The TRA should evaluate existing state discounted services to ensure they are not duplicative of the federal discount.

B. ISSUE: Develop funding mechanisms if needed.

PROPOSAL REQUESTED: Cost studies need to be submitted on the current state discounted services to determine if, in fact, schools and libraries are receiving a subsidy. Additionally, any other state discounted services will need studies to determine subsidies. Once the subsidy amounts are known a fund must be established to support the discounts. The TRA requests comments from the parties on how funding for this support can be accomplished. Please be specific and provide your view on whether support for schools and libraries should come from the same source of revenues used to support other Universal Service items.

COMMENT:

Time Warner contends that these type of cost studies are unnecessary and the Staff proposal is inconsistent with the mechanics of the federal fund which supports discounts to schools and libraries. The federal program creates a process to ensure that schools and libraries first negotiate the best rates with a carrier(s) for the provision of services. The discount is determined and applied and the carrier is entitled to recover the discount from the fund. Since the initial rates are essentially negotiated, there is no basis for providing support on the basis of the initial rates. The discounts that apply are recoverable by the carrier from the federal fund. It would appear to be premature to be concerned with State discounted services until there has been some experience with the operation of the federal program. If the State elects to impose discounts in addition to those provided by the federal program, it would appear that the state should create a fund to allow recovery of some or all of the state mandated discount. The discount and potential recovery fund, however, is a separate and distinct issue from the subsidy determination for universal service support.

C. ISSUE: Address as necessary any school and library petitions regarding pre-discount price.

PROPOSAL REQUESTED: The FCC noted that if schools and libraries believe the lowest corresponding price offered to them is unfairly high or low, they may seek recourse from the state. What procedures do you believe could be put in place to ensure that schools and libraries are offered the lowest possible price. Also, if a school or library petitions the TRA regarding the price, what criteria should be used to determine if in fact the price is unreasonably high?

COMMENT:

Effective competition will ultimately ensure that schools and libraries are always offered the lowest possible price. Information concerning prices offered to similarly situated customers should be made readily available for comparison in the initial evaluation of pricing. If a school or library feels the price is unfairly high, it may file a petition initiating a contested case proceeding and the TRA may order a cost study, if it is appropriate. In this instance, a cost study would be appropriate and necessary only if no previous cost study exists, or the available cost study is stale and it is reasonable to assume the cost of the service has decreased.

XI. Support of Health Care Providers

A. ISSUE: Determine if additional intrastate support for eligible health care providers is needed.

PROPOSAL REQUESTED: The TRA requests comments from the parties on whether additional health care discounts are needed.

COMMENT:

Without any historical data, it is very difficult to determine whether the federal support mechanism will be sufficient. Any consideration of additional intrastate support for eligible health care providers should be deferred until after the federal program has had an opportunity to evolve and be evaluated.

B. ISSUE: Develop needed funding mechanism.

PROPOSAL REQUESTED: The TRA comments from the parties on how funding for this support can be accomplished.

COMMENT:

Time Warner supports the rules and mechanisms set forth by the FCC in its Report and Order at paragraph 608 et seq., and encourages the TRA to adopt same.

XIII. Administration of Support Mechanisms

A. ISSUE: Determine which companies qualify as non-rural carriers and are subject to 1/1/99 Universal Service support.

PROPOSAL FOR COMMENT: BellSouth and United Telephone Southeast are the only companies which the Staff has identified as non-rural carriers. Are there others?

COMMENT:

In its first report to the Tennessee General Assembly, the TRA indicated that no new market entrant had yet offered service to residential customers. Pursuant to the eligibility criteria adopted by the FCC which Time Warner recommends for adoption by the TRA, BellSouth and United Telephone Southeast are the only carriers in Tennessee currently offering residential service, thereby eligible for universal service support. If at some time in the future other carriers meet the eligibility requirements, and offer residential service, these carriers should also be entitled to receive support.

B. ISSUE: Determine method for transition from current support to new support.

PROPOSAL REQUESTED: The new support mechanisms approved will be the determining factor of the impact on transition from old support to the new system. Since the fund administrator is responsible for maintaining the new fund, it may be appropriate to allow the administrator to design a system for the transition. Please provide your opinion on a transition process.

COMMENT:

The FCC has established January 1, 1999, as a target date for implementation of the interstate universal service support mechanism. Time Warner suggests that the mechanism should be first designed by way of this proceeding and consideration should then be given to timing. Presently, there is no urgent need for implementation, and the TRA could determine that a more extended time frame for Tennessee would be appropriate. Time Warner agrees that a fund administrator should be afforded the time necessary to adequately develop and implement an orderly transition process.

C. ISSUE: Determine the structure of the intrastate Universal Service fund.

1. How will it be created?

COMMENT:

First, there must be a specific identification of the scope of the fund and the components to be funded. Time Warner suggests that the components for consideration are: (1) the intrastate high cost service areas which will require funds

equal to seventy-five percent (75%) of the total funding requirement (the federal fund will provide twenty-five percent (25%) of the requirement); (2) low income programs such as Lifeline Services; and (3) existing state school discount programs.

2. Will it be consistent with or not consistent with the Federal fund?

COMMENT:

The scope of the fund should be consistent with the services supported. For example, the federal program is designed to fully fund the discounts for schools and libraries. Therefore, contributions to the fund will be made from intrastate and interstate revenues of interstate carriers. The state, therefore, does not need to supplement this program. The federal schools and libraries program does not require state fund support. Of course, any additional state specific discounts should be supported with contributions based on intrastate revenues only through the state universal service fund.

Conversely, support for service to high cost areas will be funded by the federal fund from interstate revenues only. The federal fund will provide twenty-five percent (25%) of support to these high cost areas. The state fund will provide seventy-five percent (75%) of the support of service to high cost areas and this support should be funded with intrastate revenues. Similarly, federal and state support for the Lifeline program has been designated and those contributions should be made entirely from intrastate and interstate revenues respectfully. The consistency therefore, between federal and state funding mechanisms is that contributions to the respective funds should be based on interstate revenues for the federal fund and intrastate revenues for state support.

3. Who will contribute to it?

COMMENT:

All telecommunications carriers as defined in the FCC order should contribute.

4. How often will contributions be made?

COMMENT:

Contributions should be made on a monthly or quarterly basis.

5. What basis should be used for contributions?

COMMENT:

Contributions should be calculated based upon end-user retail revenues which may be recovered through a surcharge or a "pass through" to retail customers.

6. Who is eligible to receive support?

COMMENT:

As previously stated, any carrier who is qualified to receive support and who incurs the cost of providing services eligible for support.

7. How funds will be distributed?

COMMENT:

The funds should be distributed by the administrator to those carriers incurring the cost of universal service and who are entitled to a subsidy within the parameters of the universal service support mechanism.

8. How should the TRA ensure that the fund is non-discriminatory and competitively neutral?

COMMENT:

In order to ensure that the fund is nondiscriminatory and competitively neutral, the TRA should ensure that all carriers contribute to the fund on an equitable basis and that the same contributions are generated through a surcharge on end-user retail revenues.

D. ISSUE Determine notification requirements regarding companies' certification of rural carrier status.

PROPOSAL REQUESTED: A carrier must notify the FCC and its' state Commission, that for purposes of Universal Service support determinations, it meets the definition of a rural carrier. Carriers should make such a notification each year prior to the beginning of the Universal Service Fund payout period for that year. What procedures can be put in place to ensure that rural carriers satisfy this requirement?

COMMENT:

As a procedural suggestion, this issue should be addressed along with the other issues concerning rural carriers. In the initial reporting year, all carriers claiming rural carrier status should be required to answer specific questions to determine which companies meet the definition of a rural carrier. Continuous failure to report should result in revocation of rural carrier status if, after a hearing, the carrier is found to be

in willful non-compliance. With revocation of status, the carrier should lose the benefit of protective provisions of the State and Federal Acts which control the development of competition in the rural carrier service areas.

E. ISSUE: Determine need for public interest payphones and develop funding mechanisms, if required.

PROPOSAL REQUESTED: Please provide comments on what criteria you believe is necessary for determining the need for a public interest payphone. Funding for public interest payphones may come from various sources such as the Universal Service Fund or an additive or charge on payphone access lines. What type of funding mechanisms do you believe would be appropriate for funding of public interest payphones?

COMMENT:

Time Warner submits that public interest payphones should be self-sustaining and there should be no funding mechanism required. If such payphones are not self-sustaining, they should not be installed.

F. ISSUE: Determine if the TRA should administer the intrastate Universal Service Fund.

PROPOSAL REQUESTED: Please provide comments.

COMMENT:

No. The administrator should be a neutral third party. The TRA should not complicate its judicial role in resolving disputes. If the TRA were the administrator, there would be no easily accessible, impartial forum in which to file complaints concerning fund administration.

G. ISSUE: Appoint intrastate Universal Service Fund Administrator.

PROPOSAL REQUESTED: What criteria should be established to determine qualifications as fund administrator?

COMMENT:

The fund administrator should be neutral and competent to satisfy its fiduciary responsibility to the industry and the consumers.

H. ISSUE: Determine if contributions to the Universal Service fund may be recovered by contributors, (i.e. passed on to end uses).

PROPOSAL REQUESTED: The FCC adopted a contribution assessment methodology that is competitive neutral and easy to administer. Contributions will be assessed against end users for telecommunications, and telecommunications services, including SLCs. Please provide comments.

COMMENT:

Time Warner supports the recovery mechanism described in the Staff proposal.

XIV. Other

A. ISSUE: Would the use of task forces, advisory committees, technical conferences and settlement conferences in this proceeding be helpful?

PROPOSAL REQUESTED: Some parties have commented that these groups would be helpful. If you believe these groups would be beneficial, explain where these groups or meetings make sense.

COMMENT:

These tools are quite helpful if they are designed and actually work to settle issues without the necessity of formal hearings. This can be accomplished by allowing the staff an opportunity to gather input from various sources for the preparation of possible consensus proposals to be considered by the TRA. If this occurs in an orderly fashion and issues are actually resolved, the hearing process will be streamlined and issues might be resolved amicably without the necessity of litigation. If these tools do not assist the parties in avoiding litigation, they are not useful and become an unnecessary drain of resources.

B. ISSUE: Determine intrastate funding requirements for Tennessee Relay Center (TRC).

PROPOSAL REQUESTED: Currently, the intrastate costs of operating the TRC are divided between intraLATA and interLATA for the state. The intraLATA portion is funded by all LECs based on their proportionate share of intraLATA minutes of use and the interLATA portion is funded by all interexchange carriers based on their proportionate share of interLATA minutes of use. Options for funding the TRC could include the current system, through the Universal Service Fund, or establishment of a separate fund. Which option do you believe would be best? The current fund is administered by BellSouth. Do you believe BellSouth should continue as administrator of the TRC fund?

COMMENT:

The Tennessee Relay Center is funded by a separate fund and is operating in a satisfactory manner. Time Warner contends that the current system is appropriate and it should not be changed or considered as an issue in the universal service fund proceeding. Time Warner believes that it is generally a bad idea for any telecommunications provider to be an administrator of these type funds, and, therefore, suggests that at some point another, competitively neutral administrator be selected.

C. ISSUE: Determine effect of BST stay on Universal Service.

PROPOSAL REQUESTED: If the court remands the case back to the TRA, then the price regulation audit will have to be re-done to conform with the courts ruling, which in turn would effect implicit subsidy calculations. If the court supports the TRA's decision, then revenues of certain services will be lowered, thus reducing any implicit subsidies that may exist. Please provide your comments.

COMMENT:

Time Warner has suggested on several occasions that there is no urgency for a determination in the TRA universal service fund docket. If it is necessary to conduct expensive and time consuming cost studies to determine current subsidies, it would appear that these cost studies would be worthless after the Court's decision, regardless of the ruling. Thus, Phase 2 of this proceeding, at a minimum, should be delayed until such time as the impact of a final court order is assessed.

D. ISSUE: Determine any needed changes to TRA rules, state laws, etc.

PROPOSAL REQUESTED: Provide any necessary changes to TRA rules and/or State Laws to make them conform with the Federal Law.

COMMENT:

Although, extraordinary time and effort was expended to draft TRA rules governing competition, these rules have not yet become effective even though the provisions were reconsidered for the purpose of ensuring conformance with federal law. Time Warner submits that the universal service provisions in the state law materially conform with the Federal law.

E. ISSUE: Determine date that Universal Service will be re-addressed.

PROPOSAL FOR COMMENT: The FCC is convening a Federal-State Joint Board to review the definition of Universal Service on or before January 1, 2001. The Staff would recommend that an intrastate Universal Service proceeding be held immediately following the Joint Board's decision. Please provide your comments.

COMMENT:

Time Warner agrees with the Staff proposal.

F. ISSUE: Determine and implement service quality standards.

PROPOSAL REQUESTED: The FCC determined that states may impose service quality standards that are competitively neutral and further the goals of Universal Service. Consistent with these requirements, what service quality standards do you feel are necessary?

COMMENT:

Tennessee carriers are already subject to service quality standards for end-user customers. Until such time as these standards prove to be insufficient, the TRA should avoid the imposition of different or additional standards which might administratively frustrate the implementation of the universal service program.

G. ISSUE: Are embedded cost studies appropriate to determine implicit subsidies?

PROPOSAL FOR COMMENT: Implicit subsidies are the support that currently exists for universal service elements. This current support is determined based on embedded costs, therefore, the Staff believes embedded costs are appropriate to determine implicit subsidies. Do you agree?

COMMENT:

To the extent implicit subsidies include embedded costs of the incumbent carriers, embedded costs should be considered to determine the amount of current subsidies which are actually necessary to support the cost of the service. In other words, the cost of providing universal service support should be determined by calculating the cost of the services on a going forward basis. However, determination of embedded costs, which have been traditionally assigned to the cost of the services by the incumbent LECs should be identified and subtracted from the calculation of the current implicit subsidies. The cost of universal service, and thus the support to be contributed should only include the forward-looking costs of providing those services and should exclude embedded costs.

H. ISSUE: Determine method to calculate implicit subsidies (i.e. by element, group or category).

PROPOSAL FOR COMMENT: The Staff believes that implicit subsidies should be calculated in the most efficient and least burdensome manner. To facilitate this, the Staff prefers that implicit subsidies be calculated by service groups or categories.

Please provide your comments.

COMMENT:

The goal of the TRA should be to reduce rates for other services only in an amount equal to the size of the universal service fund.

I. ISSUE: Determine effect of contracts between LECs (i.e. EAS, toll, private line, etc.) On subsidies.

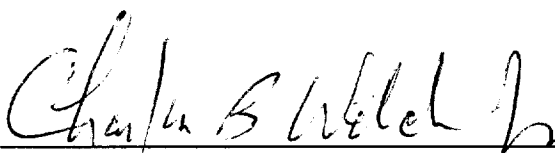
PROPOSAL REQUESTED: Please provide comments.

COMMENT:

Time Warner does not have a position on this issue at the present time.

Respectfully submitted,

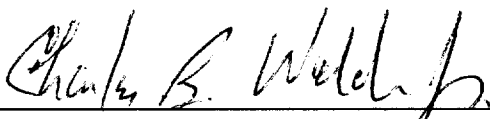
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Comments of Time Warner Communications of the Mid-South, L.P., on all parties of record by placing a copy of same in the United States Mail, properly addressed and postage prepaid on this the 21st day of August, 1997.


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